

before January 1, 2002, under the multiple support agreement provisions of section 152(c) must attach to the member's income tax return for the year of the deduction a written declaration from each of the other persons who contributed more than 10 percent of the support of such individual and who, but for the failure to contribute more than half of the support of the individual, would have been entitled to claim the individual as a dependent.

(2) The taxpayer claiming an individual as a dependent for a taxable year beginning after December 31, 2001, under the multiple support agreement provisions of section 152(c) must provide with the income tax return for the year of the deduction—

(i) A statement identifying each of the other persons who contributed more than 10 percent of the support of the individual and who, but for the failure to contribute more than half of the support of the individual, would have been entitled to claim the individual as a dependent; and

(ii) A statement indicating that the taxpayer obtained a written declaration from each of the persons described in section 152(c)(2) waiving the right to claim the individual as a dependent.

(3) The taxpayer claiming the individual as a dependent for a taxable year beginning after December 31, 2001, must retain the waiver declarations and should be prepared to furnish the waiver declarations and any other information necessary to substantiate the claim, which may include a statement showing the names of all contributors (whether or not members of the group described in section 152(c)(2)) and the amount contributed by each to the support of the claimed dependent.

[T.D. 6500, 25 FR 11402, Nov. 26, 1960, as amended by T.D. 6603, 28 FR 7094, July 11, 1963; T.D. 8989, 67 FR 20031, Apr. 24, 2002; T.D. 9040, 68 FR 4920, Jan. 31, 2003]

§ 1.152-4 Special rule for a child of divorced or separated parents or parents who live apart.

(a) *In general.* A taxpayer may claim a dependency deduction for a child (as defined in section 152(f)(1)) only if the child is the qualifying child of the taxpayer under section 152(c) or the qualifying relative of the taxpayer under

section 152(d). Section 152(c)(4)(B) provides that a child who is claimed as a qualifying child by parents who do not file a joint return together is treated as the qualifying child of the parent with whom the child resides for a longer period of time during the taxable year or, if the child resides with both parents for an equal period of time, of the parent with the higher adjusted gross income. However, a child is treated as the qualifying child or qualifying relative of the noncustodial parent if the custodial parent releases a claim to the exemption under section 152(e) and this section.

(b) *Release of claim by custodial parent—*(1) *In general.* Under section 152(e)(1), notwithstanding section 152(c)(1)(B), (c)(4), or (d)(1)(C), a child is treated as the qualifying child or qualifying relative of the noncustodial parent (as defined in paragraph (d) of this section) if the requirements of paragraphs (b)(2) and (b)(3) of this section are met.

(2) *Support, custody, and parental status—*(i) *In general.* The requirements of this paragraph (b)(2) are met if the parents of the child provide over one-half of the child's support for the calendar year, the child is in the custody of one or both parents for more than one-half of the calendar year, and the parents—

(A) Are divorced or legally separated under a decree of divorce or separate maintenance;

(B) Are separated under a written separation agreement; or

(C) Live apart at all times during the last 6 months of the calendar year whether or not they are or were married.

(ii) *Multiple support agreement.* The requirements of this paragraph (b)(2) are not met if over one-half of the support of the child is treated as having been received from a taxpayer under section 152(d)(3).

(3) *Release of claim to child.* The requirements of this paragraph (b)(3) are met for a calendar year if—

(i) The custodial parent signs a written declaration that the custodial parent will not claim the child as a dependent for any taxable year beginning

in that calendar year and the noncustodial parent attaches the declaration to the noncustodial parent's return for the taxable year; or

(ii) A qualified pre-1985 instrument, as defined in section 152(e)(3)(B), applicable to the taxable year beginning in that calendar year, provides that the noncustodial parent is entitled to the dependency exemption for the child and the noncustodial parent provides at least \$600 for the support of the child during the calendar year.

(c) *Custody.* A child is in the custody of one or both parents for more than one-half of the calendar year if one or both parents have the right under state law to physical custody of the child for more than one-half of the calendar year.

(d) *Custodial parent*—(1) *In general.* The *custodial parent* is the parent with whom the child resides for the greater number of nights during the calendar year, and the *noncustodial parent* is the parent who is not the custodial parent. A child is treated as residing with neither parent if the child is emancipated under state law. For purposes of this section, a child resides with a parent for a night if the child sleeps—

(i) At the residence of that parent (whether or not the parent is present); or

(ii) In the company of the parent, when the child does not sleep at a parent's residence (for example, the parent and child are on vacation together).

(2) *Night straddling taxable years.* A night that extends over two taxable years is allocated to the taxable year in which the night begins.

(3) *Absences.* (i) Except as provided in paragraph (d)(3)(ii) of this section, for purposes of this paragraph (d), a child who does not reside (within the meaning of paragraph (d)(1) of this section) with a parent for a night is treated as residing with the parent with whom the child would have resided for the night but for the absence.

(ii) A child who does not reside (within the meaning of paragraph (d)(1) of this section) with a parent for a night is treated as not residing with either parent for that night if it cannot be determined with which parent the child would have resided or if the child

would not have resided with either parent for the night.

(4) *Special rule for equal number of nights.* If a child is in the custody of one or both parents for more than one-half of the calendar year and the child resides with each parent for an equal number of nights during the calendar year, the parent with the higher adjusted gross income for the calendar year is treated as the custodial parent.

(5) *Exception for a parent who works at night.* If, in a calendar year, due to a parent's nighttime work schedule, a child resides for a greater number of days but not nights with the parent who works at night, that parent is treated as the custodial parent. On a school day, the child is treated as residing at the primary residence registered with the school.

(e) *Written declaration*—(1) *Form of declaration*—(i) *In general.* The written declaration under paragraph (b)(3)(i) of this section must be an unconditional release of the custodial parent's claim to the child as a dependent for the year or years for which the declaration is effective. A declaration is not unconditional if the custodial parent's release of the right to claim the child as a dependent requires the satisfaction of any condition, including the noncustodial parent's meeting of an obligation such as the payment of support. A written declaration must name the noncustodial parent to whom the exemption is released. A written declaration must specify the year or years for which it is effective. A written declaration that specifies all future years is treated as specifying the first taxable year after the taxable year of execution and all subsequent taxable years.

(ii) *Form designated by IRS.* A written declaration may be made on Form 8332, Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent, or successor form designated by the IRS. A written declaration not on the form designated by the IRS must conform to the substance of that form and must be a document executed for the sole purpose of serving as a written declaration under this section. A court order or decree or a separation agreement may not serve as a written declaration.

(2) *Attachment to return.* A noncustodial parent must attach a copy of the written declaration to the parent's return for each taxable year in which the child is claimed as a dependent.

(3) *Revocation of written declaration—*
(i) *In general.* A parent may revoke a written declaration described in paragraph (e)(1) of this section by providing written notice of the revocation to the other parent. The parent revoking the written declaration must make reasonable efforts to provide actual notice to the other parent. The revocation may be effective no earlier than the taxable year that begins in the first calendar year after the calendar year in which the parent revoking the written declaration provides, or makes reasonable efforts to provide, the written notice.

(ii) *Form of revocation.* The revocation may be made on Form 8332, Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent, or successor form designated by the IRS whether or not the written declaration was made on a form designated by the IRS. A revocation not on that form must conform to the substance of the form and must be a document executed for the sole purpose of serving as a revocation under this section. The revocation must specify the year or years for which the revocation is effective. A revocation that specifies all future years is treated as specifying the first taxable year after the taxable year the revocation is executed and all subsequent taxable years.

(iii) *Attachment to return.* The parent revoking the written declaration must attach a copy of the revocation to the parent's return for each taxable year for which the parent claims a child as a dependent as a result of the revocation. The parent revoking the written declaration must keep a copy of the revocation and evidence of delivery of the notice to the other parent, or of the reasonable efforts to provide actual notice.

(4) *Ineffective declaration or revocation.* A written declaration or revocation that fails to satisfy the requirements of this paragraph (e) has no effect.

(5) *Written declaration executed in a taxable year beginning on or before July 2, 2008.* A written declaration executed in a taxable year beginning on or be-

fore July 2, 2008, that satisfies the requirements for the form of a written declaration in effect at the time the written declaration is executed, will be treated as meeting the requirements of paragraph (e)(1) of this section. Paragraph (e)(3) of this section applies without regard to whether a custodial parent executed the written declaration in a taxable year beginning on or before July 2, 2008.

(f) *Coordination with other sections.* If section 152(e) and this section apply, a child is treated as the dependent of both parents for purposes of sections 105(b), 132(h)(2)(B), and 213(d)(5).

(g) *Examples.* The provisions of this section are illustrated by the following examples that assume, unless otherwise provided, that each taxpayer's taxable year is the calendar year, one or both of the child's parents provide over one-half of the child's support for the calendar year, one or both parents have the right under state law to physical custody of the child for more than one-half of the calendar year, and the child otherwise meets the requirements of a qualifying child under section 152(c) or a qualifying relative under section 152(d). In addition, in each of the examples, no qualified pre-1985 instrument or multiple support agreement is in effect. The examples are as follows:

Example 1. (i) B and C are the divorced parents of Child. In 2009, Child resides with B for 210 nights and with C for 155 nights. B executes a Form 8332 for 2009 releasing B's right to claim Child as a dependent for that year, which C attaches to C's 2009 return.

(ii) Under paragraph (d) of this section, B is the custodial parent of Child in 2009 because B is the parent with whom Child resides for the greater number of nights in 2009. Because the requirements of paragraphs (b)(2) and (3) of this section are met, C may claim Child as a dependent.

Example 2. The facts are the same as in *Example 1* except that B does not execute a Form 8332 or similar declaration for 2009. Therefore, section 152(e) and this section do not apply. Whether Child is the qualifying child or qualifying relative of B or C is determined under section 152(c) or (d).

Example 3. (i) D and E are the divorced parents of Child. Under a custody decree, Grandmother has the right under state law to physical custody of Child from January 1 to July 31, 2009.

(ii) Because D and E do not have the right under state law to physical custody of Child

for over one-half of the 2009 calendar year, under paragraph (c) of this section, Child is not in the custody of one or both parents for over one-half of the calendar year. Therefore, section 152(e) and this section do not apply, and whether Child is the qualifying child or qualifying relative of D, E, or Grandmother is determined under section 152(c) or (d).

Example 4. (i) The facts are the same as in *Example 3*, except that Grandmother has the right to physical custody of Child from January 1 to March 31, 2009, and, as a result, Child resides with Grandmother during this period. D and E jointly have the right to physical custody of Child from April 1 to December 31, 2009. During this period, Child resides with D for 180 nights and with E for 95 nights. D executes a Form 8332 for 2009 releasing D's right to claim Child as a dependent for that year, which E attaches to E's 2009 return.

(ii) Under paragraph (c) of this section, Child is in the custody of D and E for over one-half of the calendar year, because D and E have the right under state law to physical custody of Child for over one-half of the calendar year.

(iii) Under paragraph (d)(3)(ii) of this section, the nights that Child resides with Grandmother are not allocated to either parent. Child resides with D for a greater number of nights than with E during the calendar year and, under paragraph (d)(1) of this section, D is the custodial parent.

(iv) Because the requirements of paragraphs (b)(2) and (3) of this section are met, section 152(e) and this section apply, and E may claim Child as a dependent.

Example 5. (i) The facts are the same as in *Example 4*, except that D is away on military service from April 10 to June 15, 2009, and September 6 to October 20, 2009. During these periods Child resides with Grandmother in Grandmother's residence. Child would have resided with D if D had not been away on military service. Grandmother claims Child as a dependent on Grandmother's 2009 return.

(ii) Under paragraph (d)(3)(i) of this section, Child is treated as residing with D for the nights that D is away on military service. Because the requirements of paragraphs (b)(2) and (3) of this section are met, section 152(e) and this section apply, and E, not Grandmother, may claim Child as a dependent.

Example 6. F and G are the divorced parents of Child. In May of 2009, Child turns age 18 and is emancipated under the law of the state where Child resides. Therefore, in 2009 and later years, F and G do not have the right under state law to physical custody of Child for over one-half of the calendar year, and Child is not in the custody of F and G for over one-half of the calendar year. Section 152(e) and this section do not apply, and whether Child is the qualifying child or qualifying relative of F or G is determined under section 152(c) or (d).

Example 7. (i) The facts are the same as in *Example 6*, except that Child turns age 18 and is emancipated under state law on August 1, 2009, resides with F from January 1, 2009, through May 31, 2009, and resides with G from June 1, 2009, through December 31, 2009. F executes a Form 8332 releasing F's right to claim Child as a dependent for 2009, which G attaches to G's 2009 return.

(ii) Under paragraph (c) of this section, Child is in the custody of F and G for over one-half of the calendar year.

(iii) Under paragraph (d)(1) of this section, Child is treated as not residing with either parent after Child's emancipation. Therefore, Child resides with F for 151 nights and with G for 61 nights. Because the requirements of paragraphs (b)(2) and (3) of this section are met, section 152(e) and this section apply, and G may claim Child as a dependent.

Example 8. H and J are the divorced parents of Child. Child generally resides with H during the week and with J every other weekend. Child resides with J in H's residence for 10 consecutive nights while H is hospitalized. Under paragraph (d)(1)(i) of this section, Child resides with H for the 10 nights.

Example 9. K and L, who are separated under a written separation agreement, are the parents of Child. In August 2009, K and Child spend 10 nights together in a hotel while on vacation. Under paragraph (d)(1)(ii) of this section, Child resides with K for the 10 nights that K and Child are on vacation.

Example 10. M and N are the divorced parents of Child. On December 31, 2009, Child attends a party at M's residence. After midnight on January 1, 2010, Child travels to N's residence, where Child sleeps. Under paragraph (d)(1) of this section, Child resides with N for the night of December 31, 2009, to January 1, 2010, because Child sleeps at N's residence that night. However, under paragraph (d)(2) of this section, the night of December 31, 2009, to January 1, 2010, is allocated to taxable year 2009 for purposes of determining whether Child resides with M or N for a greater number of nights in 2009.

Example 11. O and P, who never married, are the parents of Child. In 2009, Child spends alternate weeks residing with O and P. During a week that Child is residing with O, O gives Child permission to spend a night at the home of a friend. Under paragraph (d)(3)(i) of this section, the night Child spends at the friend's home is treated as a night that Child resides with O.

Example 12. The facts are the same as in *Example 11*, except that Child also resides at summer camp for 6 weeks. Because Child resides with each parent for alternate weeks, Child would have resided with O for 3 weeks and with P for 3 weeks of the period that Child is at camp. Under paragraph (d)(3)(i) of this section, Child is treated as residing with O for 3 weeks and with P for 3 weeks.

Example 13. The facts are the same as in *Example 12*, except that Child does not spend alternate weeks residing with O and P, and it cannot be determined whether Child would have resided with O or P for the period that Child is at camp. Under paragraph (d)(3)(ii) of this section, Child is treated as residing with neither parent for the 6 weeks.

Example 14. (i) Q and R are the divorced parents of Child. Q works from 11 PM to 7 AM Sunday through Thursday nights. Because of Q's nighttime work schedule, Child resides with R Sunday through Thursday nights and with Q Friday and Saturday nights. Therefore, in 2009, Child resides with R for 261 nights and with Q for 104 nights. Child spends all daytime hours when Child is not in school with Q and Q's address is registered with Child's school as Child's primary residence. Q executes a Form 8332 for 2009 releasing Q's right to claim Child as a dependent for that year, which R attaches to R's 2009 return.

(ii) Under paragraph (d) of this section, Q is the custodial parent of Child in 2009. Child resides with R for a greater number of nights than with Q due to Q's nighttime work schedule, and Child spends a greater number of days with Q. Therefore, paragraph (d)(5) of this section applies rather than paragraph (d)(1) of this section. Because the requirements of paragraphs (b)(2) and (3) of this section are met, R may claim Child as a dependent.

Example 15. (i) In 2009, S and T, the parents of Child, execute a written separation agreement. The agreement provides that Child will live with S and that T will make monthly child support payments to S. In 2009, Child resides with S for 335 nights and with T for 30 nights. S executes a letter declaring that S will not claim Child as a dependent in 2009 and in subsequent alternate years. The letter contains all the information requested on Form 8332, does not require the satisfaction of any condition such as T's payment of support, and has no purpose other than to serve as a written declaration under section 152(e) and this section. T attaches the letter to T's return for 2009 and 2011.

(ii) In 2010, T fails to provide support for Child, and S executes a Form 8332 revoking the release of S's right to claim Child as a dependent for 2011. S delivers a copy of the Form 8332 to T, attaches a copy of the Form 8332 to S's tax return for 2011, and keeps a copy of the Form 8332 and evidence of delivery of the written notice to T.

(iii) T may claim Child as a dependent for 2009 because S releases the right to claim Child as a dependent under paragraph (b)(3) of this section by executing the letter, which conforms to the requirements of paragraph (e)(1) of this section, and T attaches the letter to T's return in accordance with paragraph (e)(2) of this section. In 2010, S revokes the release of the claim in accordance with

paragraph (e)(3) of this section, and the revocation takes effect in 2011, the taxable year that begins in the first calendar year after S provides written notice of the revocation to T. Therefore, in 2011, section 152(e) and this section do not apply, and whether Child is the qualifying child or qualifying relative of S or T is determined under section 152(c) or (d).

Example 16. The facts are the same as *Example 15*, except that the letter expressly states that S releases the right to claim Child as a dependent only if T is current in the payment of support for Child at the end of the calendar year. The letter does not qualify as a written declaration under paragraph (b)(3) of this section because S's agreement not to claim Child as a dependent is conditioned on T's payment of support and, under paragraph (e)(1)(i) of this section, a written declaration must be unconditional. Therefore, section 152(e) and this section do not apply, and whether Child is the qualifying child or qualifying relative of S or T for 2009 as well as 2011 is determined under section 152(c) or (d).

Example 17. (i) U and V are the divorced parents of Child. Child resides with U for more nights than with V in 2009 through 2011. In 2009, U provides a written statement to V declaring that U will not claim Child as a dependent, but the statement does not specify the year or years it is effective. V attaches the statement to V's returns for 2009 through 2011.

(ii) Because the written statement does not specify a year or years, under paragraph (e)(1) of this section, it is not a written declaration that conforms to the substance of Form 8332. Under paragraph (e)(4) of this section, the statement has no effect. Section 152(e) and this section do not apply, and whether Child is the qualifying child or qualifying relative of U or V is determined under section 152(c) or (d).

Example 18. (i) W and X are the divorced parents of Child. In 2009, Child resides solely with W. The divorce decree requires X to pay child support to W and requires W to execute a Form 8332 releasing W's right to claim Child as a dependent. W fails to sign a Form 8332 for 2009, and X attaches an unsigned Form 8332 to X's return for 2009.

(ii) The order in the divorce decree requiring W to execute a Form 8332 is ineffective to allocate the right to claim Child as a dependent to X. Furthermore, under paragraph (e)(1) of this section, the unsigned Form 8332 does not conform to the substance of Form 8332, and under paragraph (e)(4) of this section, the Form 8332 has no effect. Therefore, section 152(e) and this section do not apply, and whether Child is the qualifying child or qualifying relative of W or X is determined under section 152(c) or (d).

(iii) If, however, W executes a Form 8332 for 2009, and X attaches the Form 8332 to X's

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return, then X may claim Child as a dependent in 2009.

Example 19. (i) Y and Z are the divorced parents of Child. In 2003, Y and Z enter into a separation agreement, which is incorporated into a divorce decree, under which Y, the custodial parent, releases Y's right to claim Child as a dependent for all future years. The separation agreement satisfies the requirements for the form of a written declaration in effect at the time it is executed. Z attaches a copy of the separation agreement to Z's returns for 2003 through 2009.

(ii) Under paragraph (e)(1)(ii) of this section, a separation agreement may not serve as a written declaration. However, under paragraph (e)(5) of this section, a written declaration executed in a taxable year beginning on or before July 2, 2008, that satisfies the requirements for the form of a written declaration in effect at the time the written declaration is executed, will be treated as meeting the requirements of paragraph (e)(1) of this section. Therefore, the separation agreement may serve as the written declaration required by paragraph (b)(3)(i) of this section for 2009, and Z may claim Child as a dependent in 2009 and later years.

Example 20. (i) The facts are the same as in *Example 19*, except that in 2009 Y executes a Form 8332 revoking the release of Y's right to claim Child as a dependent for 2010. Y complies with all the requirements of paragraph (e)(3) of this section.

(ii) Although Y executes the separation agreement releasing Y's right to claim Child as a dependent in a taxable year beginning on or before July 2, 2008, under paragraph (e)(5) of this section, Y's execution of the Form 8332 in 2009 is effective to revoke the release. Therefore, section 152(e) and this section do not apply in 2010, and whether Child is the qualifying child or qualifying relative of Y or Z is determined under section 152(c) or (d).

(h) *Effective/applicability date.* This section applies to taxable years beginning after July 2, 2008.

[T.D. 9408, 73 FR 37801, July 2, 2008]

§ 1.153-1 Determination of marital status.

For the purpose of determining the right of an individual to claim an exemption for his spouse under section 151(b), the determination of whether such individual is married shall be made as of the close of his taxable year, unless his spouse dies during such year, in which case the determination shall be made as of the time of such death. An individual legally separated from his spouse under a decree of di-

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vorce or separate maintenance shall not be considered as married. The provisions of this section may be illustrated by the following examples:

Example 1. A, who files his returns on the basis of a calendar year, married B on December 31, 1956. B, who had never previously married, had no gross income for the calendar year 1956 nor was she the dependent of another taxpayer for such year. A may claim an exemption for B for 1956.

Example 2. C and his wife, D, were married in 1940. They remained married until July 1956 at which time D was granted a decree of divorce. C, who files his income tax returns on a calendar year basis, cannot claim an exemption for D on his 1956 return as C and D were not married on the last day of C's taxable year. Had D died instead of being divorced, C could have claimed an exemption for D for 1956 as their marital status would have been determined as of the date of D's death.

§ 1.154 Statutory provisions; cross references.

SEC. 154. *Cross references.* (1) For definitions of "husband" and "wife", as used in section 152(b)(4), see section 7701(a)(17).

(2) For deductions of estates and trusts, in lieu of the exemptions under section 151, see section 642(b).

(3) For exemptions of nonresident aliens, see section 873(b)(3).

(4) For exemptions of citizens deriving income mainly from sources within possessions of the United States, see section 931(e).

[Sec. 154 as amended by sec. 103(c)(2), Foreign Investors Tax Act 1966 (80 Stat. 1551)]

[TD 6500, 25 FR 11402, Nov. 26, 1960; 25 FR 14021, Dec. 21, 1960, as amended by T.D. 7332, 39 FR 44216, Dec. 23, 1974]

ITEMIZED DEDUCTIONS FOR INDIVIDUALS AND CORPORATIONS

§ 1.161-1 Allowance of deductions.

Section 161 provides for the allowance as deductions, in computing taxable income under section 63(a), of the items specified in Part VI (section 161 and following), Subchapter B, Chapter 1 of the Code, subject to the exceptions provided in Part IX (section 261 and following), of such Subchapter B, relating to items not deductible. Double deductions are not permitted. Amounts deducted under one provision of the Internal Revenue Code of 1954 cannot again be deducted under any other provision thereof. See also section 7852(c), relating to the taking into account,